

NICHOLAS J. BOOS (SBN 233399)
nboos@maynardcooper.com
MAYNARD, COOPER & GALE, LLP
600 Montgomery Street, Suite 2600
San Francisco, CA 94111
Telephone: (415) 646-4700
Facsimile: (205) 254-1999

Attorneys for Defendants
LIBERTY MUTUAL INSURANCE COMPANY and WEST AMERICAN
INSURANCE COMPANY

FREDRIC J. GREENBLATT (SBN 92672)
fjg@greenblattlaw.com
GREENBLATT LOVERIDGE
ATTORNEYS AT LAW
22151 Ventura Boulevard, Suite 200
Woodland Hills, California 91364
Telephone: (818) 992-1188
Facsimile: (818) 992-7687

Attorneys for Plaintiff
OEM, PACIFIC, INC.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION

OEM PACIFIC, INC.,

Plaintiff,

vs.

LIBERTY MUTUAL INSURANCE
COMPANY, et al.,

Defendants.

} Case No. 2:17-cv-02143-SJO-AJW

} **STIPULATED PROTECTIVE
ORDER**

1. A. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles.

B. GOOD CAUSE STATEMENT

This action is likely to involve trade secrets, customer and pricing lists and other valuable research, development, commercial, financial, technical and/or proprietary information for which special protection from public disclosure and from use for any purpose other than prosecution of this action is warranted. Such confidential and proprietary materials and information consist of, among other things, confidential business or financial information, information regarding confidential business practices, or other confidential research, development, or commercial information (including information implicating privacy rights of third parties), information otherwise generally unavailable to the public, or which may be privileged or otherwise protected from disclosure under state or federal statutes, court rules, case decisions, or common law. Accordingly, to expedite the flow of information, to facilitate the prompt resolution of disputes over confidentiality of discovery materials, to adequately protect information the parties are entitled to keep confidential, to ensure that the parties are permitted reasonable necessary uses of such material in preparation for and in the conduct of trial, to address their handling at the end of the litigation, and serve the ends of

1 justice, a protective order for such information is justified in this matter. It is the
2 intent of the parties that information will not be designated as confidential for
3 tactical reasons and that nothing be so designated without a good faith belief that
4 it has been maintained in a confidential, non-public manner, and there is good
5 cause why it should not be part of the public record of this case.

6
7 C. ACKNOWLEDGEMENT OF PROCEDURE FOR FILING UNDER
8 SEAL

9 The parties further acknowledge, as set forth in Section 12.3, below, that
10 this Stipulated Protective Order does not entitle them to file confidential
11 information under seal; Local Civil Rule 79-5 sets forth the procedures that must
12 be followed and the standards that will be applied when a party seeks permission
13 from the court to file material under seal.

14 There is a strong presumption that the public has a right of access to
15 judicial proceedings and records in civil cases. In connection with non-dispositive
16 motions, good cause must be shown to support a filing under seal. *See Kamakana*
17 *v. City and County of Honolulu*, 447 F.3d 1172, 1176 (9th Cir. 2006), *Phillips v.*
18 *Gen. Motors Corp.*, 307 F.3d 1206, 1210-11 (9th Cir. 2002), *Makar-Welbon v.*
19 *Sony Electronics, Inc.*, 187 F.R.D. 576, 577 (E.D. Wis. 1999) (even stipulated
20 protective orders require good cause showing), and a specific showing of good
21 cause or compelling reasons with proper evidentiary support and legal
22 justification, must be made with respect to Protected Material that a party seeks to
23 file under seal. The parties' mere designation of Disclosure or Discovery Material
24 as CONFIDENTIAL does not— without the submission of competent evidence
25 by declaration, establishing that the material sought to be filed under seal
26 qualifies as confidential, privileged, or otherwise protectable—constitute good
27 cause.

28 Further, if a party requests sealing related to a dispositive motion or trial,

1 then compelling reasons, not only good cause, for the sealing must be shown, and
2 the relief sought shall be narrowly tailored to serve the specific interest to be
3 protected. *See Pintos v. Pacific Creditors Ass'n.*, 605 F.3d 665, 677-79 (9th Cir.
4 2010). For each item or type of information, document, or thing sought to be filed
5 or introduced under seal in connection with a dispositive motion or trial, the party
6 seeking protection must articulate compelling reasons, supported by specific facts
7 and legal justification, for the requested sealing order. Again, competent evidence
8 supporting the application to file documents under seal must be provided by
9 declaration.

10 Any document that is not confidential, privileged, or otherwise protectable
11 in its entirety will not be filed under seal if the confidential portions can be
12 redacted. If documents can be redacted, then a redacted version for public
13 viewing, omitting only the confidential, privileged, or otherwise protectable
14 portions of the document, shall be filed. Any application that seeks to file
15 documents under seal in their entirety should include an explanation of why
16 redaction is not feasible.

17
18 2. DEFINITIONS

19 2.1 Action: *OEM Pacific, Inc. v. Liberty Mutual Insurance*
20 *Company, et al.*, Case No. 2:17-cv-02143-SJO-AJW.

21 2.2 Challenging Party: a Party or Non-Party that challenges the
22 designation of information or items under this Order.

23 2.3 “CONFIDENTIAL” Information or Items: information (regardless of
24 how it is generated, stored or maintained) or tangible things that qualify for
25 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
26 the Good Cause Statement.

27 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as
28 their support staff).

1 2.5 Designating Party: a Party or Non-Party that designates information
2 or items that it produces in disclosures or in responses to discovery as
3 “CONFIDENTIAL.”

4 2.6 Disclosure or Discovery Material: all items or information,
5 regardless of the medium or manner in which it is generated, stored, or
6 maintained (including, among other things, testimony, transcripts, and tangible
7 things), that are produced or generated in disclosures or responses to discovery in
8 this matter.

9 2.7 Expert: a person with specialized knowledge or experience in a
10 matter pertinent to the litigation who has been retained by a Party or its counsel to
11 serve as an expert witness or as a consultant in this Action.

12 2.8 House Counsel: attorneys who are employees of a party to this
13 Action. House Counsel does not include Outside Counsel of Record or any other
14 outside counsel.

15 2.9 Non-Party: any natural person, partnership, corporation, association
16 or other legal entity not named as a Party to this action.

17 2.10 Outside Counsel of Record: attorneys who are not employees of a
18 party to this Action but are retained to represent or advise a party to this Action
19 and have appeared in this Action on behalf of that party or are affiliated with a
20 law firm that has appeared on behalf of that party, and includes support staff.

21 2.11 Party: any party to this Action, including all of its officers, directors,
22 employees, consultants, retained experts, and Outside Counsel of Record (and
23 their support staffs).

24 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
25 Discovery Material in this Action.

26 2.13 Professional Vendors: persons or entities that provide litigation
27 support services (e.g., photocopying, videotaping, translating, preparing exhibits
28 or demonstrations, and organizing, storing, or retrieving data in any form or

medium) and their employees and subcontractors.

2.14 Protected Material: any Disclosure or Discovery Material that is designated as “CONFIDENTIAL.”

2.15 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing Party.

3. SCOPE

The protections conferred by this Stipulation and Order cover not only Protected Material (as defined above), but also (1) any information copied or extracted from Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations, or presentations by Parties or their Counsel that might reveal Protected Material.

Any use of Protected Material at trial shall be governed by the orders of the trial judge. This Order does not govern the use of Protected Material at trial.

4. DURATION

Once a case proceeds to trial, information that was designated as CONFIDENTIAL or maintained pursuant to this protective order used or introduced as an exhibit at trial becomes public and will be presumptively available to all members of the public, including the press, unless compelling reasons supported by specific factual findings to proceed otherwise are made to the trial judge in advance of the trial. *See Kamakana*, 447 F.3d at 1180-81 (distinguishing “good cause” showing for sealing documents produced in discovery from “compelling reasons” standard when merits-related documents are part of court record). Accordingly, the terms of this protective order do not extend beyond the commencement of the trial.

5. DESIGNATED PROTECTED MATERIAL

1 5.1 Exercise of Restraint and Care in Designating Material for
2 Protection. Each Party or Non-Party that designates information or items for
3 protection under this Order must take care to limit any such designation to
4 specific material that qualifies under the appropriate standards. The Designating
5 Party must designate for protection only those parts of material, documents, items
6 or oral or written communications that qualify so that other portions of the
7 material, documents, items or communications for which protection is not
8 warranted are not swept unjustifiably within the ambit of this Order.

9 Mass, indiscriminate or routinized designations are prohibited.
10 Designations that are shown to be clearly unjustified or that have been made for
11 an improper purpose (e.g., to unnecessarily encumber the case development
12 process or to impose unnecessary expenses and burdens on other parties) may
13 expose the Designating Party to sanctions.

14 If it comes to a Designating Party's attention that information or items that
15 it designated for protection do not qualify for protection, that Designating Party
16 must promptly notify all other Parties that it is withdrawing the inapplicable
17 designation.

18 5.2 Manner and Timing of Designations. Except as otherwise provided
19 in this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
20 stipulated or ordered, Disclosure or Discovery Material that qualifies for
21 protection under this Order must be clearly so designated before the material is
22 disclosed or produced.

23 Designation in conformity with this Order requires:

24 (a) for information in documentary form (e.g., paper or electronic
25 documents, but excluding transcripts of depositions or other pretrial or trial
26 proceedings), that the Producing Party affix at a minimum, the legend
27 "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each page that
28 contains protected material. If only a portion of the material on a page qualifies

1 for protection, the Producing Party also must clearly identify the protected
2 portion(s) (e.g., by making appropriate markings in the margins).

3 A Party or Non-Party that makes original documents available for
4 inspection need not designate them for protection until after the inspecting Party
5 has indicated which documents it would like copied and produced. During the
6 inspection and before the designation, all of the material made available for
7 inspection shall be deemed “CONFIDENTIAL.” After the inspecting Party has
8 identified the documents it wants copied and produced, the Producing Party must
9 determine which documents, or portions thereof, qualify for protection under this
10 Order. Then, before producing the specified documents, the Producing Party must
11 affix the “CONFIDENTIAL legend” to each page that contains Protected
12 Material. If only a portion of the material on a page qualifies for protection, the
13 Producing Party also must clearly identify the protected portion(s) (e.g., by
14 making appropriate markings in the margins).

15 (b) for testimony given in depositions that the Designating Party
16 identifies the Disclosure or Discovery Material on the record, before the close of
17 the deposition all protected testimony.

18 (c) for information produced in some form other than documentary and
19 for any other tangible items, that the Producing Party affix in a prominent place
20 on the exterior of the container or containers in which the information is stored
21 the legend “CONFIDENTIAL.” If only a portion or portions of the information
22 warrants protection, the Producing Party, to the extent practicable, shall identify
23 the protected portion(s).

24 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
25 failure to designate qualified information or items does not, standing alone, waive
26 the Designating Party’s right to secure protection under this Order for such
27 material. Upon timely correction of a designation, the Receiving Party must make
28 reasonable efforts to assure that the material is treated in accordance with the

provisions of this Order.

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of confidentiality at any time that is consistent with the Court's Scheduling Order.

6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process under Local Rule 37-1 et seq.

6.3 Joint Stipulation. Any challenge submitted to the Court shall be via a joint stipulation pursuant to Local Rule 37-2.

6.4 The burden of persuasion in any such challenge proceeding shall be on the Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions. Unless the Designating Party has waived or withdrawn the confidentiality designation, all parties shall continue to afford the material in question the level of protection to which it is entitled under the Producing Party's designation until the Court rules on the challenge.

7. ACCESS TO AND USE OF PROTECTED MATERIAL

7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this Action only for prosecuting, defending or attempting to settle this Action. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. When the Action has been terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL DISPOSITION).

Protected Material must be stored and maintained by a Receiving Party at a

1 location and in a secure manner that ensures that access is limited to the persons
2 authorized under this Order.

3 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
4 otherwise ordered by the court or permitted in writing by the Designating Party,
5 a Receiving Party may disclose any information or item designated
6 “CONFIDENTIAL” only to:

7 (a) the Receiving Party’s Outside Counsel of Record in this Action, as
8 well as employees of said Outside Counsel of Record to whom it is reasonably
9 necessary to disclose the information for this Action;

10 (b) the officers, directors, and employees (including House Counsel) of
11 the Receiving Party to whom disclosure is reasonably necessary for this Action;

12 (c) Experts (as defined in this Order) of the Receiving Party to whom
13 disclosure is reasonably necessary for this Action and who have signed the
14 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

15 (d) the court and its personnel;

16 (e) court reporters and their staff;

17 (f) professional jury or trial consultants, mock jurors, and Professional
18 Vendors to whom disclosure is reasonably necessary for this Action and who
19 have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

20 (g) the author or recipient of a document containing the information or a
21 custodian or other person who otherwise possessed or knew the information;

22 (h) during their depositions, witnesses, and attorneys for witnesses, in
23 the Action to whom disclosure is reasonably necessary provided: (1) the deposing
24 party requests that the witness sign the form attached as Exhibit 1 hereto; and (2)
25 they will not be permitted to keep any confidential information unless they sign
26 the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless
27 otherwise agreed by the Designating Party or ordered by the court. Pages of
28 transcribed deposition testimony or exhibits to depositions that reveal Protected

1 Material may be separately bound by the court reporter and may not be disclosed
2 to anyone except as permitted under this Stipulated Protective Order; and

3 (i) any mediator or settlement officer, and their supporting personnel,
4 mutually agreed upon by any of the parties engaged in settlement discussions.

5
6 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
7 IN OTHER LITIGATION

8 If a Party is served with a subpoena or a court order issued in other
9 litigation that compels disclosure of any information or items designated in this
10 Action as “CONFIDENTIAL,” that Party must:

11 (a) promptly notify in writing the Designating Party. Such notification
12 shall include a copy of the subpoena or court order;

13 (b) promptly notify in writing the party who caused the subpoena or
14 order to issue in the other litigation that some or all of the material covered by
15 the subpoena or order is subject to this Protective Order. Such notification shall
16 include a copy of this Stipulated Protective Order; and

17 (c) cooperate with respect to all reasonable procedures sought to be
18 pursued by the Designating Party whose Protected Material may be affected.

19 If the Designating Party timely seeks a protective order, the Party served
20 with the subpoena or court order shall not produce any information designated in
21 this action as “CONFIDENTIAL” before a determination by the court from
22 which the subpoena or order issued, unless the Party has obtained the
23 Designating Party’s permission. The Designating Party shall bear the burden and
24 expense of seeking protection in that court of its confidential material and
25 nothing in these provisions should be construed as authorizing or encouraging a
26 Receiving Party in this Action to disobey a lawful directive from another court.

27
28 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE

1 PRODUCED IN THIS LITIGATION

2 (a) The terms of this Order are applicable to information produced by a
3 Non-Party in this Action and designated as “CONFIDENTIAL.” Such
4 information produced by Non-Parties in connection with this litigation is
5 protected by the remedies and relief provided by this Order. Nothing in these
6 provisions should be construed as prohibiting a Non-Party from seeking
7 additional protections.

8 (b) In the event that a Party is required, by a valid discovery request, to
9 produce a Non-Party’s confidential information in its possession, and the Party is
10 subject to an agreement with the Non-Party not to produce the Non-Party’s
11 confidential information, then the Party shall:

12 (1) promptly notify in writing the Requesting Party and the Non-
13 Party that some or all of the information requested is subject to a confidentiality
14 agreement with a Non-Party;

15 (2) promptly provide the Non-Party with a copy of the Stipulated
16 Protective Order in this Action, the relevant discovery request(s), and a
17 reasonably specific description of the information requested; and

18 (3) make the information requested available for inspection by the
19 Non-Party, if requested.

20 (c) If the Non-Party fails to seek a protective order from this court
21 within 14 days of receiving the notice and accompanying information, the
22 Receiving Party may produce the Non-Party’s confidential information
23 responsive to the discovery request. If the Non-Party timely seeks a protective
24 order, the Receiving Party shall not produce any information in its possession or
25 control that is subject to the confidentiality agreement with the Non-Party before
26 a determination by the court. Absent a court order to the contrary, the Non-Party
27 shall bear the burden and expense of seeking protection in this court of its
28 Protected Material.

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2 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

3 If a Receiving Party learns that, by inadvertence or otherwise, it has
4 disclosed Protected Material to any person or in any circumstance not authorized
5 under this Stipulated Protective Order, the Receiving Party must immediately (a)
6 notify in writing the Designating Party of the unauthorized disclosures, (b) use its
7 best efforts to retrieve all unauthorized copies of the Protected Material, (c)
8 inform the person or persons to whom unauthorized disclosures were made of all
9 the terms of this Order, and (d) request such person or persons to execute the
10 “Acknowledgment and Agreement to Be Bound” that is attached hereto as
11 Exhibit A.

12
13 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
14 PROTECTED MATERIAL

15 When a Producing Party gives notice to Receiving Parties that certain
16 inadvertently produced material is subject to a claim of privilege or other
17 protection, the obligations of the Receiving Parties are those set forth in Federal
18 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
19 whatever procedure may be established in an e-discovery order that provides for
20 production without prior privilege review. Pursuant to Federal Rule of Evidence
21 502(d) and (e), insofar as the parties reach an agreement on the effect of
22 disclosure of a communication or information covered by the attorney-client
23 privilege or work product protection, the parties may incorporate their
24 agreement in the stipulated protective order submitted to the court.

25
26 12. MISCELLANEOUS

27 12.1 Right to Further Relief. Nothing in this Order abridges the right of
28 any person to seek its modification by the Court in the future.

1 12.2 Right to Assert Other Objections. By stipulating to the entry of this
2 Protective Order, no Party waives any right it otherwise would have to object to
3 disclosing or producing any information or item on any ground not addressed in
4 this Stipulated Protective Order. Similarly, no Party waives any right to object on
5 any ground to use in evidence of any of the material covered by this Protective
6 Order.

7 12.3 Filing Protected Material. A Party that seeks to file under seal any
8 Protected Material must comply with Local Civil Rule 79-5. Protected Material
9 may only be filed under seal pursuant to a court order authorizing the sealing of
10 the specific Protected Material at issue. If a Party's request to file Protected
11 Material under seal is denied by the court, then the Receiving Party may file the
12 information in the public record unless otherwise instructed by the court.

13
14 13. FINAL DISPOSITION

15 After the final disposition of this Action, as defined in paragraph 4, within
16 60 days of a written request by the Designating Party, each Receiving Party must
17 return all Protected Material to the Producing Party or destroy such material. As
18 used in this subdivision, "all Protected Material" includes all copies, abstracts,
19 compilations, summaries, and any other format reproducing or capturing any of
20 the Protected Material. Whether the Protected Material is returned or destroyed,
21 the Receiving Party must submit a written certification to the Producing Party
22 (and, if not the same person or entity, to the Designating Party) by the 60 day
23 deadline that (1) identifies (by category, where appropriate) all the Protected
24 Material that was returned or destroyed and (2) affirms that the Receiving Party
25 has not retained any copies, abstracts, compilations, summaries or any other
26 format reproducing or capturing any of the Protected Material. Notwithstanding
27 this provision, Counsel are entitled to retain an archival copy of all pleadings,
28 motion papers, trial, deposition, and hearing transcripts, legal memoranda,

1 correspondence, deposition and trial exhibits, expert reports, attorney work
2 product, and consultant and expert work product, even if such materials contain
3 Protected Material. Any such archival copies that contain or constitute Protected
4 Material remain subject to this Protective Order as set forth in Section 4
5 (DURATION).

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14. VIOLATION

Any violation of this Order may be punished by appropriate measures including, without limitation, contempt proceedings and/or monetary sanctions.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: 12/06/2017

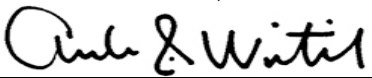
/s/ Fredric J. Greenblatt
Attorneys for Plaintiff

DATED: 12/06/2017

/s/ Nicholas J. Boos
Attorneys for Defendant

FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

DATED: December 11, 2017



HON. Andrew J. Wistrich
United States Magistrate Judge

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3
4 I, _____ [print or type full name], of
5 _____[print or type full address], declare under penalty of perjury
6 that I have read in its entirety and understand the Stipulated Protective Order that
7 was issued by the United States District Court for the Central District of California
8 on [date] in the case of *OEM Pacific, Inc. v. Liberty Mutual Insurance Company, et*
9 *al.*, Case No. 2:17-cv-02143-SJO-AJW. I agree to comply with and to be bound by
10 all the terms of this Stipulated Protective Order and I understand and acknowledge
11 that failure to so comply could expose me to sanctions and punishment in the
12 nature of contempt. I solemnly promise that I will not disclose in any manner any
13 information or item that is subject to this Stipulated Protective Order to any person
14 or entity except in strict compliance with the provisions of this Order.
15 I further agree to submit to the jurisdiction of the United States District Court for
16 the Central District of California for enforcing the terms of this Stipulated
17 Protective Order, even if such enforcement proceedings occur after termination of
18 this action.

19 I hereby appoint _____ [print or type full name] of
20 _____[print or type full address and
21 telephone number] as my California agent for service of process in connection
22 with this action or any proceedings related to enforcement of this Stipulated
23 Protective Order.

24 Date: _____

25 City and State where sworn and signed: _____

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27 Printed name: _____
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Signature: _____

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I am employed in the County of San Francisco, State of California. I am over the age of 21 and am not a party to the within action. My business address is Maynard, Cooper & Gale, LLP, 600 Montgomery Street, Suite 2600, San Francisco, California 94111. On the date indicated below, I served the foregoing document described as:

on the interested parties in this action by placing: [] the original document - OR-
[X] a true and correct copy thereof enclosed in sealed envelopes addressed as
follows:

Attorneys for Plaintiff
OEM Pacific, Inc.

[X] **BY E-MAIL OR ELECTRONIC TRANSMISSION AND MAIL:** In addition to service by mail, on this date I caused the document(s) to be sent to the person(s) at the electronic service address(es) listed above.

I declare that I am employed in the office of a member who has been admitted to the bar of this Court at whose direction the service was made. I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed December 6, 2017, in San Francisco, California.



Rachel Ouk